

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In re:

5 08-13555(JMP)

6 LEHMAN BROTHERS HOLDINGS INC., (Jointly Administered)

7 et al.,

8 Debtors.

9 - - - - - x

10 In re:

11 08-01420(JMP)(SIPA)

12 LEHMAN BROTHERS INC.,

13 Debtor.

14 - - - - - x

15 In re:

16 09-10583(JMP)

17 LEHMAN BROTHERS FINANCE AG,

18 IN LIQUIDATION,

19 Debtor.

20 - - - - - x

21 EL VEASTA LAMPLEY,

22 Plaintiff,

23 v.

Adv. Case No.

24 LEHMAN BROTHERS HOLDINGS

13-01354(JMP)

25 INC., et al.,

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Defendants.

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U.S. Bankruptcy Court

One Bowling Green

New York, New York

November 20, 2013

10:01 AM

B E F O R E :

HON JAMES M. PECK

U.S. BANKRUPTCY JUDGE

1 Hearing re: Motion for an Order Pursuant to Section 105(a)
2 of the Bankruptcy Code and Bankruptcy Rule 9019, Authorizing
3 and Approving Certain Settlements Related to Variable
4 Prepaid Forward Contracts [ECF No. 56]

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6 Hearing re: Motion to Dismiss Adversary 13-01354

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8 Hearing re: Motion Pursuant to Rule 9019 of the Federal
9 Rules of Bankruptcy Procedure and Section 105(a) of the
10 Bankruptcy Code for Approval of (I) Partial Settlement
11 Agreements Relating to Certain Credit Default Swap
12 Agreements and Indentures and (II) Amendment to Partial
13 Settlement Agreement Relating to Pebble Creek LCDO 2007-3
14 Credit Default Swap Agreement and Indenture [ECF No. 40573]

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25 Transcribed by: Dawn South

1 A P P E A R A N C E S :

2 WEIL, GOTSHAL & MANGES LLP

3 Attorneys for the Debtors

4 767 Fifth Avenue

5 New York, NY 10153-0119

6

7 BY: JACQUELINE MARCUS, ESQ.

8 ZAW WIN, ESQ.

9 CANDACE ARTHUR, ESQ.

10

11 GIBSON, DUNN & CRUTCHER LLP

12 Attorney for the Debtors

13 200 Park Avenue

14 New York, NY 10166-0193

15

16 BY: ROBERT KRAKOW, ESQ.

17

18 DICONZA TRAUIG LLP

19 Attorney for BAC Florida Bank

20 630 Third Avenue, 7th Floor

21 New York, NY 10017

22

23 BY: ALLEN G. KADISH, ESQ.

24

25

1 CHAPMAN AND CUTLER LLP

2 Attorney for U.S. Bank National Association, as Trustee

3 111 West Monroe Street

4 Chicago, IL 60603-4080

5
6 BY: FRANKLIN H. TOP III, ESQ.

7
8 CLEARY GOTTlieb STEEN & HAMILTON LLP

9 Attorney for GenRe Partners, L.P.

10 One Liberty Plaza

11 New York, NY 10006-1470

12
13 BY: LUKE A. BAREFOOT, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Be seated. Good morning.

3 MS. MARCUS: Good morning, Your Honor, Jacqueline
4 Marcus from Weil, Gotshal & Manges on behalf of Lehman
5 Brothers Holdings, Inc. and its affiliates.

6 The first matter on the docket, Your Honor, is in
7 relation to In re: Lehman Brothers Finance, and that's going
8 to be handled by Robert Krakow of Gibson, Dunn.

9 THE COURT: Okay. Thank you.

10 MR. KRAKOW: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. KRAKOW: Robert Krakow of Gibson, Dunn &
13 Crutcher for LBF in its Chapter 15 proceeding, and I am here
14 this morning to present LBF's 9019 motion to approve
15 settlement agreements it has entered into with three limited
16 partnerships, all of whom are affiliated with the Bass
17 family in Fort Worth, Texas.

18 The motion was timely noticed for hearing today
19 and for objections have been filed.

20 The background to this motion is as follows.

21 LBF entered into variable prepaid forward
22 contracts with each of the partnerships. Four contracted
23 with GenRe Partners, one contract each with NRC Partners and
24 BRK Investors.

25 The contracts were all entered into in the 2006 to

1 2008 time frame, and under each of the contracts LBF made an
2 upfront payment to the partnership, and the partnership
3 agreed that at some specified future maturity date it would
4 settle the contract either by way of a cash settlement
5 payment or by delivering Berkshire Hathaway Class A shares
6 in amounts to be calculated pursuant to the agreements.

7 In each contract the partnerships secured its
8 obligations to LBF by pledging Berkshire Hathaway Class A
9 shares. NRC pledged 116 shares, BRK 363, and GenRe under
10 the four contracts pledged a total of 1988 shares.

11 LBF perfected its security interest in the shares
12 by depositing them with Libby in the cases of NRC and BRK
13 and with LBI in the case of GenRe.

14 For most, but not all of the contracts, LBF posted
15 cash collateral to secure its own obligations under the
16 agreements.

17 The maturity dates for the contracts range from
18 2009 until 2011, but one of the contracts, the BRK contract,
19 had an automatic early termination date that was triggered
20 by Lehman's bankruptcy filing in September 2008.

21 For each of the six contracts the partnerships
22 elected the cash settlement route, which in turn required
23 LBF to return to Berkshire Hathaway shares that it held as
24 collateral, but this became problematic for two different
25 reasons.

1 For NRC and BRK it was learned post bankruptcy
2 that Libby at some point in time had rehypothecated the
3 shares and they were thus lost to LBF.

4 In the case of LBI we learned in roughly early
5 2011 that the LBI trustee had the shares, but he was taking
6 the position that there was no obligation to return the
7 shares to LBF because a customer property claim had not been
8 timely filed.

9 Thus as to all six of the contracts LBF was not in
10 a position to return the shares.

11 We began meetings with counsel for the
12 partnerships in 2011. They informed us that they believed
13 they had two types of claims against LBF. One was a
14 straight direct claim for the failure to return the shares,
15 which they said should be calculated by taking the
16 difference between the cash settlement values for each
17 contract and the current market value of those shares.

18 They also said they would have a claim for
19 consequential damages for tax liabilities likely to result
20 from the failure to return the shares, because if the shares
21 were not returned the IRS was likely to treat the original
22 contracts as sales contracts for the shares.

23 LBF conceded that it was liable for failing to
24 return the shares, we had a debate as to at what point in
25 time one should measure the market value to calculate those

1 damages, and we disputed whether or not LBF could be liable
2 for the consequential damages, the tax liabilities that
3 would ensue.

4 But we put those differences aside and began
5 negotiating a settlement structure that was designed to
6 limit the tax liabilities of the partnerships and thus limit
7 the potential exposure that LBF would have for those claims.

8 And the basic idea was to take -- that each of the
9 partnerships would pay into escrow the cash settlement
10 amounts that were due under the contracts. LBF would match
11 those cash deposits in its own escrow accounts, and any cash
12 collateral that had been posted by LBF would also go into
13 the LBF escrow. The escrow agent would then take the LBF
14 cash deposits, plus the escrow amounts, buy as many
15 replacement shares of Berkshire Hathaway as possible,
16 deliver them to the partnerships, and then the cash
17 settlement amounts would be delivered back to LBF to
18 reimburse it for the cash outlays.

19 Under this approach the partnerships would receive
20 most, but not all of the shares, and thus substantially
21 reduce the tax liability.

22 While those negotiations were ongoing we, on
23 behalf of LBF, were engaged in settlement negotiations with
24 LBI on a whole array of issues, one of which was the return
25 of the 1988 shares.

1 And in October of last year we reached an
2 agreement that was approved by this Court in November of
3 last year that the LBI trustee would return 65 percent of
4 those shares or 1292 shares total, and we agreed at that
5 time, in an order that you entered, that we would hold those
6 shares in a segregated account pending a resolution of our
7 differences with GenRe or some other order of the Court.

8 Within the past 90 days the 1292 shares have been
9 returned by the LBI trustee to LBF which has since then held
10 those shares in a segregated account. And that has paved
11 the way for the settlement that we now present to you.

12 The basic outlines of the settlement are similar
13 to the structure that I told you about before. In each
14 settlement both the relevant partnership and LBF are going
15 to establish escrow accounts with Bank of America. For the
16 BRK and NRC settlements those partnerships will pay into
17 escrow the cash settlement amounts owed under the contracts.
18 For BRK it's 39.3 million, for NRC 11.9 million. LBF will
19 pay corresponding amounts into each of its escrow accounts.
20 And in the case of BRK 4.7 million of LBF cash collateral
21 will also be deposited in the LBF escrow account.

22 Bank of America, as escrow agent, will, acting
23 through its affiliate, Merrill Lynch, will use the funds in
24 the LBF escrow accounts to purchase as many Berkshire
25 Hathaway shares as possible and will then deliver them to

1 the partnerships and deliver to LBF the cash in the NRC and
2 BRK escrow accounts.

3 Because the number of replacement shares delivered
4 will be less than the number LBF is obligated to deliver
5 under the contracts LBF has agreed to grant allowed
6 unsecured claims in its Swiss bankruptcy proceedings of
7 \$3 million U.S. to NRC and 6.2 million U.S. to BRK to be
8 calculated pursuant to a conversion to Swiss francs.

9 All other claims held by the parties against each
10 other will be released.

11 For the four GenRe contracts the structure is
12 somewhat different due to the fact that we have recovered
13 the 1292 shares.

14 Under the GenRe settlement the deposits will work
15 as follows.

16 GenRe will pay into its escrow accounts the
17 approximately \$207 million of cash settlement payments under
18 the contracts. LBF will deposit into its escrow account
19 approximately \$72 million, plus the 1292 shares. The
20 parties will also cause approximately 26.5 million of cash
21 collateral to be paid into the LBF escrow account.

22 The 72 million, plus half of the cash collateral,
23 will be used by the escrow agent to acquire as many
24 replacement shares of Berkshire Hathaway as possible. Those
25 replacement shares, plus the 1292 shares, will be delivered

1 to GenRe.

2 The balance of the cash collateral, the other
3 13 million plus, plus the 207 million in the GenRe escrow
4 account, will be delivered to LBF.

5 When all is said and done GenRe will recover most,
6 but not all, of the 1988 shares, and LBF will net
7 \$147.5 million for its creditors.

8 GenRe will have no claim in LBF Swiss proceedings
9 and the parties will release all other claims they may have
10 against each other.

11 Your Honor, these settlements are the product of
12 extensive arms length negotiations between knowledgeable and
13 sophisticated parties and reflect good faith compromises of
14 the issues in dispute.

15 As detailed in pages 8 through 14 of the 9019
16 motion we believe these settlements reflect a fair and
17 reasonable resolution and that the results are as good or
18 better that LBF could reasonably expect to obtain through
19 litigation.

20 We believe these settlements are a true win/win,
21 because by helping the partnerships reduce their tax
22 liability we've at the same time been able to reduce LBF's
23 potential exposure for that liability and would bring
24 substantial additional value now into the LBF estate for the
25 benefit of its creditors.

1 There are several conditions precedent to the
2 effectiveness of these agreements.

3 The first obviously is a final and non-appealable
4 order from this Court approving the 9019 motion.

5 The second is agreed upon escrow agreements. And
6 we actually now have those. They're not signed yet, but
7 they are fully negotiated and ready for execution not only
8 between LBF and the partnerships but also Bank of America
9 and Merrill Lynch.

10 And we require the approval of LBF's creditors'
11 committee. The settlements have been presented to them and
12 I expect we will have those approvals by the end of this
13 week.

14 For NRC and BRK only there are two additional
15 conditions because of the claims that they are being allowed
16 in Switzerland.

17 There needs to be a publication of the settlement
18 plan in Switzerland and either no objections filed to what's
19 known as the realization plan or a final order overruling
20 any such objections, and there needs to be an offer of
21 assignment of LBF's rights with respect to these agreements.

22 And it's necessary that within some specified time
23 no creditor accepts that offer of assignment, which would
24 require a substantial payment into the LBF estate to
25 effectuate.

1 So assuming those two things -- two hurdles are
2 cleared then the NRC and BRK agreements can go final.

3 So approving -- assuming approval by this Court we
4 think the GenRe settlement can go effective in early
5 December, but the NRC and BRK settlements will take a little
6 bit longer.

7 Again, there are no objections to the motion and
8 I'm happy to answer any questions the Court has, but
9 otherwise we would respectfully request that the Court grant
10 the 9019 motion.

11 THE COURT: That was very well presented
12 considering the complexity of this. And someone appears
13 ready to say something or I don't know if it's to me or to
14 you that that person has risen to say something.

15 MR. BAREFOOT: Your Honor, just one point of
16 classification on the record, that's all.

17 THE COURT: Before you identify yourself for the
18 record as to who you represent and who you are and give that
19 point of clarification I just have a question.

20 MR. KRAKOW: Sure.

21 THE COURT: It seems to me that this is a
22 substantially tax driven set of structures in consequence of
23 alleged tax liability associated with the failure to deliver
24 the Berkshire Hathaway shares. Has that tax liability been
25 quantified in terms of what it might be if there were no

1 settlement, and to what extent is that tax liability
2 contested by LBF, and to what extent does the allowed claims
3 for BRK and NRU (sic) reflect a recognition of that tax
4 liability?

5 MR. KRAKOW: Yes, Your Honor.

6 The -- the partnerships have told us what they
7 believe the tax liability is, and we have had our tax people
8 look at it, and it appears to be in the range of what they
9 are talking about.

10 And for NRC and BRK, and we detail some of this in
11 the motion, we have -- the basic question with respect to
12 the tax liability is whether a Swiss court applying U.S. law
13 would find that LBF could be liable for consequential
14 damages, and that's a question that a New York court would
15 have a fair amount of discretion in deciding in terms of the
16 reasonable probability that this tax liability would have
17 resulted and the awareness of that at the time of the
18 contract, how a Swiss court would evaluate, how a U.S. court
19 was going to rule is a little difficult to assess.

20 We have for purposes of our analysis assumed a 50
21 percent likelihood that LBF would be liable in the amounts
22 of tax liability that the partnerships say they would be
23 facing, and we factored that in in coming up with the
24 settlement amounts that have been agreed to for the claim
25 amounts with BRK and NRC.

1 THE COURT: Okay. Thank you. And I won't press
2 you for the quantum of the alleged tax liability, you've
3 given me enough. Thank you.

4 MR. KRAKOW: And that is in the 9019 motion.

5 THE COURT: Okay.

6 MR. KRAKOW: Thank you, Your Honor.

7 MR. BAREFOOT: Good morning, Your Honor, Luke
8 Barefoot from Cleary Gottlieb for the GenRe Partners and the
9 other Bass affiliates who are counterparty to the
10 settlement.

11 Just very briefly one note of clarification in
12 relation to Mr. Krakow's presentation on the consequential
13 damages font of liability that if this were not settled the
14 Bass family entities would have asserted.

15 I believe he mentioned that the -- that it was the
16 Bass family's position that the IRS would potentially take
17 the position that the original contract of -- the prepaid
18 forward contracts would have represented contracts of sale
19 of the shares.

20 It's not our position that the original contract
21 would have represented a sale of the securities at the time
22 of entry into the contract, but rather that if subsequently
23 it became clear that LBF was not going to perform its
24 obligations to redeliver the shares that only at that point
25 and in that taxable year would there be a disposition of the

1 shares that would potentially trigger tax liability.

2 THE COURT: Okay.

3 MR. BAREFOOT: Thank you, Your Honor.

4 THE COURT: It's approved.

5 MR. KRAKOW: Thank you, Your Honor.

6 THE COURT: I have one question though before you
7 all depart unrelated to this, and it may be that this is the
8 wrong time and place to ask the question, but because LBF is
9 present through counsel and I'm interested in what's going
10 on this may be an invitation for a chamber's conference at
11 some point between now and the end of the year in reference
12 to the status of the settlement which has been objected to
13 by the Tschira entities.

14 I have had some litigation here involving those
15 entities both with respect to certain claim issues and
16 certain affirmative litigation issues that are being handled
17 by Jones Day.

18 It is a black box to me however as to what is
19 going on in Switzerland, and parties in litigation with
20 Tschira have requested a pretrial conference regarding
21 discovery and scheduling. That will happen some time in the
22 near term. But that's in my view the tip of the iceberg
23 from my perspective is to what, if anything, the going on
24 more fundamentally to try to reconcile what seems to be a
25 broader-based business dispute that impacts the

1 effectiveness of the settlement previously approved.

2 So question one is, are you in a position to tell
3 me what's going on in Switzerland with that settlement
4 and/or any objections to the settlement lodged by the
5 Tschira entities? And if not are you at least in a position
6 to talk to the right people so that we can set up a
7 chamber's conference and I can gain greater visibility as to
8 what's really happening?

9 MR. ROSENTHAL: Your Honor, may I answer that?
10 Michael Rosenthal, from Gibson --

11 THE COURT: Yes.

12 MR. ROSENTHAL: Your Honor, we -- I can give you a
13 very quick summary, but I do think that we should talk to
14 our client in Switzerland, and it probably would be better
15 handled in a chamber's conference.

16 But what is now available is that the Tschira
17 entities did file an objection in Switzerland to the LBF,
18 LBHI settlement. The Swiss Financial Markets Association,
19 FINMA (ph), has recently issued an order denying all of the
20 aspects of the objection, and there -- that came out
21 Thursday -- Wednesday or Thursday of last week I believe,
22 and there is now a 30-day appeal period on that.

23 THE COURT: Okay.

24 MR. ROSENTHAL: So that's what I can tell the
25 Court.

1 THE COURT: Okay. That's very helpful. Thank
2 you.

3 MR. ROSENTHAL: And if the Court -- should we
4 contact chambers about setting up a chamber's conference if
5 that's --

6 THE COURT: Yes. And so my thinking on this can
7 be clearly expressed to others involved. I am really
8 interested in discussing not only the short-term discovery
9 and case management issues in the litigation in which you
10 are not directly involved but also the prospects of some
11 mediated resolution of all issues as between the Tschira
12 entities and Lehman affiliates of all sorts, including LBF,
13 with the goal toward promoting global peace.

14 MR. ROSENTHAL: We will communicate that, Your
15 Honor.

16 THE COURT: Okay.

17 MR. ROSENTHAL: Thank you very much.

18 THE COURT: Thank you.

19 MR. KRAKOW: Your Honor, I have a copy of the
20 order on our motion, it was attached to the motion, but I'm
21 happy to present another copy if you'd like.

22 THE COURT: If it's on a piece of paper it's going
23 to do me no good.

24 MR. KRAKOW: Okay.

25 THE COURT: I need it electronically.

1 MR. KRAKOW: Okay.

2 THE COURT: So --

3 MR. KRAKOW: We'll take care of that.

4 THE COURT: So you're welcome to hand it to one of
5 my law clerks, but we'll -- we'll probably shred it.

6 (Laughter)

7 MR. KRAKOW: I'll save them the probably.

8 THE COURT: Okay. Thank you.

9 MR. KRAKOW: Thank you, Your Honor. May we be
10 excused?

11 THE COURT: You may be excused.

12 MR. KRAKOW: Thank you.

13 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

14 MR. WIN: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. WIN: Zaw Win, Weil, Gotshal & Manges for
17 Lehman Brothers Holdings, Inc.

18 The next matter on the agenda is in adversary
19 proceeding 13-01354, which is El Veasta Lampley versus LBHI.

20 This matter was commenced on May 23rd of this
21 year, and on July 8th the debtors filed -- or excuse me --
22 Lehman Brothers Holdings, Inc. filed a motion to dismiss.

23 There were two status conferences held in this
24 adversary proceeding both involving scheduling of the
25 hearing of the debtors' motion to dismiss. And on

1 October 15th this Court entered an order establishing a
2 briefing schedule. Pursuant to that order Ms. Lampley's
3 response deadline was November 5th and she did not file
4 anything nor did she serve anything on the debtors in
5 response to the debtors' motion to dismiss.

6 So at this point she has not responded to the
7 motion to dismiss and the debtors would request that the
8 Court enter that motion and dismiss the adversary
9 proceeding.

10 THE COURT: Just a question about any contact that
11 you may have had or that others in your office may have had
12 with Ms. Lampley.

13 Between the time of our last hearing when we set
14 the schedule and today has anyone been in contact with the
15 plaintiff or has the plaintiff been in contact with anyone
16 at Weil, Gotshal or at Lehman Brothers Holdings?

17 MR. WIN: Your Honor, I sent the plaintiff several
18 emails. I forwarded her the order, I reached out to her at
19 the beginning of this week to inquire whether or not she was
20 going to appeal at this hearing. I emailed her again
21 yesterday a copy of the agenda for today's hearing with
22 another request to let us know if she was planning to
23 appear, and I haven't gotten any responses from her.

24 THE COURT: I take it those emails did not bounce
25 back, they apparently were delivered as far as you can tell?

1 MR. WIN: As far as I can tell. And I have
2 communicated with her at that email address previously and
3 received responses. That would have been over the summer.

4 THE COURT: All right.

5 MR. WIN: Or in September maybe.

6 THE COURT: The adversary proceeding number
7 13-01354 brought my Ms. Lampley against Lehman Brothers
8 Holdings, Inc. is dismissed.

9 MR. WIN: Thank you, Your Honor.

10 The next matter on the agenda will be handled by
11 my colleague, Jackie Marcus.

12 MS. MARCUS: Good morning again, Your Honor.
13 Jacqueline Marcus from Weil, Gotshal & Manges.

14 The last matter on the agenda for today, docket
15 number 40573, is the motion pursuant to Rule 9019 and
16 Section 105 of the Bankruptcy Code for approval of partial
17 settlement agreements relating to two credits default swaps
18 and indentures and an amount to a partial settlement
19 agreement that was previously approved.

20 We have filed the declaration of Larry - Lawrence
21 Brandman in support of the motion at ECF number 41174,
22 Mr. Brandman is present in court this morning.

23 In addition U.S. Bank, the trustee under Rule 3
24 deals has filled affidavits, ECF numbers 41095 and 41124
25 regarding the notice provided to noteholders in all these

1 transactions.

2 We have received three objections to the proposed
3 motion. I've been authorized to advise the Court that one
4 of the objectors, the Whaleback Foundation, has withdrawn
5 its objection to the amended settlement agreement regarding
6 the Pebble Creek transaction. That means that all three
7 objections relate to the Exum Ridge 2007-2 settlement
8 agreement.

9 Two of the objecting parties, the Whaleback
10 Foundation and ESP Funding I have not objected to the
11 substance of the proposed relief but have elected to be
12 treated as objecting noteholders under the terms of the
13 settlement agreement.

14 The third objecting party, BAC Florida Bank, has a
15 more substantive objection.

16 As reflected on the docket the plan administrator
17 has adjourned the hearing with respect to Exum Ridge 2007-2,
18 to the next omnibus hearing which will be held on
19 December 18th. We hope to have discussions with BAC Florida
20 Bank in the interim and hopefully resolve their objection.

21 THE COURT: Do I understand that if that objection
22 of BAC Florida Bank can you resolved through conversations
23 between now and December 18 that that will then go forward
24 in a substantially uncontested mode because the other
25 objections are not to the merits of the settlement?

1 MS. MARCUS: That's -- that's correct.

2 THE COURT: Okay.

3 MS. MARCUS: The other -- the way we described it
4 the other objecting parties have opted out of the settlement
5 but have not objected to the Court entering the order.

6 THE COURT: Right, understood.

7 MS. MARCUS: I'd like to quote a very, very brief
8 summary of the relief requested in the motion with respect
9 to Exum Ridge 2006-1 and Pebble Creek.

10 The settlement agreement with respect to Exum
11 Ridge 2006-1 is similar to other settlements that have been
12 approved by the Court previously.

13 The agreement effectively provides for a
14 settlement of the flip clause dispute as to this
15 transaction.

16 The collateral held by the trustee will be
17 liquidated or redeemed and will be distributed as agreed by
18 the parties.

19 The outstanding fees and expenses of the trustee
20 will be paid.

21 The noteholder settlement amount, which is
22 confidential, will be paid to the holders of all notes who
23 have not objected to the proposed settlement.

24 In this case if any objectors had objected to the
25 proposed settlement then we would have placed funds in an

1 escrow account to secure payment of their claims. However,
2 since no noteholders have objected there will be not be an
3 escrow account with respect to Exum Ridge 2006-1.

4 Certain additional funds will be set aside for
5 payment of additional fees and expenses of U.S. Bank, and
6 the balance of the funds on hand will be paid to LBSF.

7 Upon distribution of all the amounts in the escrow
8 amount and any remaining proofs of claim filed by the --
9 excuse me -- any remained proofs of claims filed by the
10 trustee or the issuer or the co-issuer will be withdrawn.

11 As no noteholders have objected to the Exum Ridge
12 2006-1 transaction and U.S. Bank has obtained the fairness
13 opinion contemplated by the settlement agreement, approval
14 of the Exum Ridge 2006-1 settlement agreement will result in
15 a resolution of all pending matters with respect to this
16 deal.

17 The amend Pebble Creek agreement amends a
18 settlement agreement that was previously approved by the
19 Court on April 23rd, 2013.

20 Under the initial agreement the trustee made
21 distributions to LBSF with respect to all notes that LBSF
22 had acquired and establish an escrow account with respect to
23 notes not held by LBSF.

24 The proposed amendment to the Pebble Creek
25 settlement agreement will allow LBSF to free up additional

1 cash by effecting a settlement on behalf of all noteholders
2 who did not object and releasing any cash remaining in the
3 escrow account to LBSF.

4 In essence, as amended, the Pebble Creek
5 settlement agreement parrots the structure of the Exum Ridge
6 2006-1 settlement agreement and preserves the rights of
7 objecting noteholders to opt out.

8 However again in this case there are no objecting
9 noteholders with respect to Pebble Creek and approval of the
10 amended Pebble Creek settlement agreement will also effect a
11 complete resolution of this matter.

12 The plan administrator therefore requests that the
13 Court grant the motion as to Exum Ridge 2006-1 and Pebble
14 Creek 2007-3.

15 I have a black line copy of the proposed order,
16 Your Honor, because what we've done is we've carved out the
17 one adjourned settlement agreement from the ambit of the
18 order.

19 THE COURT: Okay, I'll take a look at that.

20 MS. MARCUS: If I may approach?

21 THE COURT: Sure. Thank you.

22 MS. MARCUS: And for the Court's convenience what
23 we've done is we've redefined the term settlement agreement
24 so that the term settlement agreement as used in this order
25 applies only to the Exum Ridge 2006 agreement and the Pebble

1 Creek amended agreement, and we've also included language at
2 the end of the order which makes it very clear that nothing
3 in this order applies to the Exum Ridge 2007-2 settlement
4 agreement.

5 Mr. Kadish is in the courtroom, he has been
6 provided this morning -- well actually last night -- with a
7 copy of the black lined order. I don't know if he has any
8 comments.

9 THE COURT: Okay. Any comments on this?

10 MR. KADISH: Good morning, Your Honor. Allen
11 Kadish, DiConza Traurig.

12 I wasn't going to appear, my purpose today was to
13 make sure that the Exum Ridge 2007-2 deal was carved out of
14 discussions or relief today.

15 We've seen a black line, it looks simple enough.
16 Counsel has represented, and I think the order is clear
17 enough that anything, Your Honor, that you do today with
18 respect to the uncontested settlements has nothing to do
19 with 2007-2, which is contested, and we'll be back to see
20 you on December 18th.

21 THE COURT: Okay. That's clear. Thank you.

22 Are there any other parties who wish to be heard?

23 MR. TOP: Frank Top, Your Honor, from Chapman and
24 Cutler on behalf of U.S. Bank National Association.

25 I just wanted to confirm the fact that the

1 Whaleback Foundation did indeed withdraw their
2 objection with respect to Pebble Creek 2007-3.

3 And so Your Honor is aware, you know, we do obtain
4 a fairness opinion with respect to each of these settlements
5 from a -- from a law professor just to make sure that the,
6 you know, confidential noteholder payments seem fair and
7 reasonable to this particular person.

8 THE COURT: Is a law professor actually qualified
9 to give such opinions?

10 MR. TOP: He's a business and bankruptcy expert.

11 THE COURT: I'm not going to go there, I'm -- and
12 you can do whatever you think best to protect your -- your
13 client's interests, and --

14 MR. TOP: In any event we also --

15 THE COURT: -- that's fine.

16 MR. TOP: -- just to make sure that these
17 settlements are fair and reasonable kicked the tires on
18 Lehman's calculation of the termination payment just to make
19 sure that -- not that it's exactly correct, but that it's
20 within a range such that these settlements work properly.

21 And with that I have nothing further to say.

22 THE COURT: Okay. I see that Mr. Brandman is
23 here. Good morning. I've read his declaration and I think
24 there's no reason for me to ask any questions of him.

25 This is a consensual arrangement which follows the

1 format at least of an earlier settlement in Pebble Creek
2 where I asked for certain information to be provided off the
3 record to me.

4 I don't know to what extent it would be desirable
5 before finally approving this to clear the courtroom of
6 observers that should not be present when confidential
7 information is provided to the Court to simply give me some
8 added assurances with regard to the economic significance of
9 this settlement to the debtors in particular.

10 One of the aspects of this that is at least to me
11 a little opaque is the congruence of no purchases and
12 settlements with respect to the flip clause dispute that on
13 a blended basis no doubt produces a certainly realization to
14 the estate.

15 I think I understand generally what's going on,
16 but it would be helpful to me in a private session, not a
17 public session, to have certain questions answered.

18 But I'm certainly prepared to approve the
19 transaction today with respect to Exum Ridge 2006-1 and
20 amended Pebble Creek 2007-3 on a purely uncontested and
21 consensual basis.

22 MS. MARCUS: Would you like to do that now, Your
23 Honor --

24 THE COURT: Yes.

25 MS. MARCUS: -- we're finished I think with the

1 agenda --

2 THE COURT: Yes.

3 MS. MARCUS: -- so we're fine with that.

4 THE COURT: We can do it right now by just kicking
5 certain people out.

6 MS. MARCUS: That's correct.

7 THE COURT: And you'll tell me who should be
8 kicked out.

9 (Pause)

10 THE COURT: It would have been more polite to say
11 by excusing certain people.

12 (Laughter)

13 MS. MARCUS: So are we off the record?

14 THE COURT: Let's go off the record now.

15 (Whereupon the designation of record was concluded at
16 10:36 AM)

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I N D E X

RULINGS

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Motion for an Order Pursuant to Section

105(a) of the Bankruptcy Code and Bankruptcy

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Settlements Related to Variable Prepaid

Forward Contracts [ECF No. 56]

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Motion to Dismiss Adversary 13-01354

22

8

Motion Pursuant to Rule 9019 of the Federal

Rules of Bankruptcy Procedure and Section

105(a) of the Bankruptcy Code for Approval

of (I) Partial Settlement Agreements Relating

to Certain Credit Default Swap Agreements

and Indentures and (II) Amendment to Partial

Settlement Agreement Relating to Pebble Creek

LCDO 2007-3 Credit Default Swap Agreement and

Indenture [ECF No. 40573]

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

Digitally signed by Dawn South
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ou, email=digital@veritext.com,
c=US
Date: 2013.11.25 12:07:54 -05'00'

AAERT Certified Electronic Transcriber CET**D-408

Veritext

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: November 25, 2013